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Opinion No. 63-18-L
R-110 and R-181
January 17, 1963

REQUESTED BY: J. FRED TALLEY
State Real Estate Department

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Does a large tract of land which may at a future time be divided for the purpose of selling or leasing individual and probably dissimilarly sized parcels therefrom constitute a subdivision under A.R.S. Title 32, Chapter 20, necessitating approval by the Real Estate Commissioner prior to the offering of such parcel or parcels for sale or lease, where at the time of such offering the owner or developer of the land does not yet know how many, if any, parcels therefrom will be sold or leased, or the size of the contemplated parcels?

ANSWER: No.

This opinion covers two requests from the Real Estate Department concerning:

- (a) A railroad which owns large tracts of real property which it will divide into whatever sized or shaped parcels meet the requirements of a potential industrial purchaser who necessitates spur track facilities from the railroad; and
- (b) A partnership owning an industrial park which will build facilities to suit a long-term lessee of a portion of the park.

The following statutes are pertinent to the question:

1. A.R.S. § 32-2101.8 as amended, which states:

"8. 'Subdivision' or 'subdivided lands' means improved or unimproved land or lands

divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels. As amended Laws 1960, Ch. 129, § 1; Laws 1961, Ch. 9, § 1."

2. A.R.S. § 32-2181(A), which states:

"A. Before offering subdivided lands for sale or lease, the owner, agent or subdivider shall notify the commissioner in writing of his intention. . . ."

3. A.R.S. §§ 32-2182 through 32-2185.

Several prior opinions of this office deal with related questions although none answer the precise question. The prior opinions are referred to herein for background information and incorporated herein by reference thereto, to the extent that they relate to the present question.

Attorney General's Opinion No. 57-54 determined that large tracts of land which are divided or prepared to be subdivided for the purpose of sale or lease into five or more parcels of 5 and 10-acre tracts constitute subdivisions, necessitating that the prior approval of the Real Estate Commissioner be secured before offering such parcels for sale or lease.

Attorney General's Opinion No. 60-73 determined that a sale of lands in not less than 25-acre plots, sold as agricultural land and not building lots, outside the United States of America, falls under the jurisdiction of the Real Estate Department. That opinion is also of interest because it determined that the Arizona statutes in question are not confined in application to land subdivided for residential purposes.

Attorney General's Opinion No. 55-208 determined that the sale of the fifth lot of an original single plot did not ordinarily render an owner a subdivider under the law, but that the particular facts surrounding the transaction would be determinative.

Attorney General's Opinion 61-75 determined that a cooperative apartment project does not come within the definition of a subdivision.

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The foregoing opinions also reviewed the California statutes, from which our Arizona real estate statutes were adopted, and the California cases decided thereunder, reviewing the several decisions.

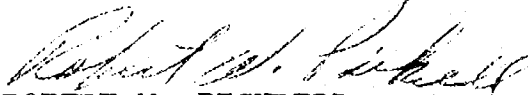
A.R.S. § 32-2181(A), when read in conjunction with A.R.S. § 32-2101.8 as amended, which defines the phrase, "subdivided lands," states that the owner, agent or subdivider must notify the Real Estate Commissioner of his intention to offer for sale or lease lands divided or proposed to be divided, whether immediate or future, into five or more lots or parcels.

It therefore follows that if an owner, agent or subdivider at the time of the offering does not have a present intent or definite knowledge that in the future the larger tract will be divided into five or more lots or parcels, he does not fulfill the condition precedent and does not come within the purview of the statute.

The firms in question apparently have no formal plan of development and state that it is impossible in advance to predict the size and shape of parcels which purchaser/lessee--industries may require. The parcels are in effect carved out of the larger tract to suit the industrial user and this occurs if, when and as an industrial user purchases or leases the parcel.

In the case of the railroad, it is further stated that pre-planning is impossible for the reason that there are physical limitations due to the characteristics of trackage curvature, since the tracks must be installed to serve the industrial purchasers.

Accordingly, this office is of the opinion that compliance with A.R.S. § 32-2181 and the related statutory sections is dependent on knowledge, intent and plans at the time of the offering, to subdivide the larger tract into five or more lots or parcels. If, from the nature of the development, no such intent or knowledge exists or is possible on the part of the developer at the time of the offering, registration with the Real Estate Department is not required under A.R.S. § 32-2181.


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